

BBB NATIONAL PROGRAMS, INC.
The Direct Selling Self-Regulatory Council

Case Number: 2-2019 – Monitoring Inquiry – Southwestern Advantage, Inc.

COMPANY DESCRIPTION

Southwestern Advantage, Inc. (“Southwestern Advantage” or the “Company”) is a single level direct selling company that specializes in educational materials. Founded in 1868 and based in Nashville, TN, the Company’s product line includes materials focused on early learning, homework help, and college testing resources.

BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs, Inc. This inquiry was commenced by the DSSRC pursuant to its ongoing independent monitoring of advertising and marketing claims in the direct selling industry.

Specifically, DSSRC identified several core earnings claims being disseminated on the Instagram page maintained by Southwestern Advantage as well as in videos located on the Company’s website: <http://www.southwesternadvantage.com/Build-Your-Business>

The representative earnings claims that were the subject of this review are as follows:

A. Express and Implied Earnings Claims – Social Media Claims

- *Numerous depictions of Southwestern Advantage Student Dealers on Social Media [Instagram] Post:*
 - *“Photograph of a student holding a Summer Gross Profit of \$24,486”*
 - *“Photograph of a student holding a Summer Gross Profit of \$24,744”*
 - *“Photograph of a student holding a Summer Gross Profit of \$28,500.96”*
 - *“Photograph of a student holding a Summer Gross Profit of \$42,337.20”*
 - *“Photograph of a student holding a Summer Gross Profit of \$60,353”*
 - *“Photograph of a student holding a Summer Gross Profit of \$37,650.06”*
 - *“Photograph of a student holding a Summer Gross Profit of \$28,045.22”*
- *Depictions are similar in substance to the following representative example:*



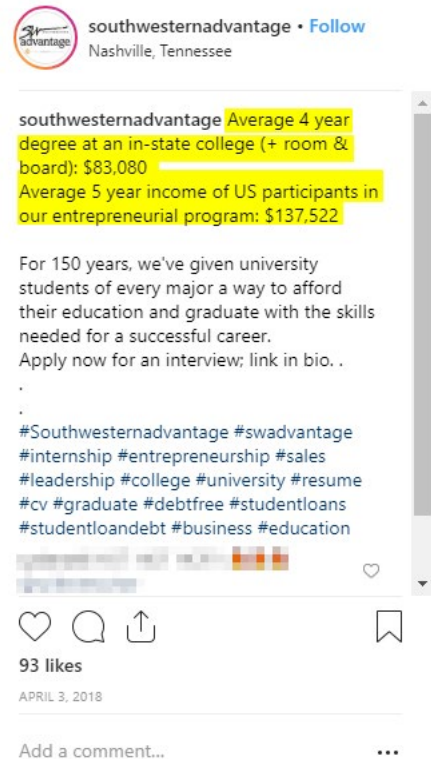
Profit Pics • Follow 9w



- Numerous instances of social media posts featuring a photo of a student with text indicating the name of student and “graduated with zero loan debt and a resume that’s top of his/her class. You can too.”
- “Average 4 year degree at an in-state college (+room and board): \$83,080”
- “Average 5 year income of US participants in our entrepreneurial program: \$137,522”
- Depictions are similar in substance to the following representative example:

Will graduated with
zero student loan debt
 and a resume that’s
 top of his class.

You can too.



B. Express and Implied Earnings Claims – Video Testimonials on Company’s Website

- Video testimonial from a Southwestern Advantage Student Dealer: ““I made \$11,000.””
- Video testimonial from a Southwestern Advantage Student Dealer: “I made right around \$10,000”
- Video testimonial from a Southwestern Advantage Student Dealer: “In six summers with Southwestern Advantage, I have made approximately \$160,000”
- Video testimonial from a Southwestern Advantage Student Dealer: “What I really enjoy was getting residual check every month for about \$150 to \$200.”
- Video testimonial from a Southwestern Advantage Student Dealer: “I plan on making around \$300 a month from residual income.”

In the Instagram posts and testimonial videos on the Company’s website, the depictions of and statements from the Company’s student dealers communicate various unqualified income representations regarding the amount of money and incentive trips that they have earned. In its inquiry, DSSRC informed the Company of its concern that the reasonable consumer may interpret these claims to mean that the depicted success claimed by the students would be typical of the results that a student who sells Southwestern Advantage will generally achieve.

COMPANY’S POSITION

Southwestern Advantage indicated to DSSRC that it initiated an audit of both the Company website and its social media properties. In its written response, the Company further indicated that it had removed a number of claims contained in social media posts, photo albums and YouTube videos and was continuing its efforts to remove any other potentially unsubstantiated claims. In the spirit of good faith participation in voluntary self-regulation, Southwestern Advantage also confirmed that it was removing from social media the “Gross Profit” depictions referenced above and that it was taking further remedial measures including:

- Updating the FAQ information on the Company’s website
- Developing disclosure language for a hyperlink to be used when necessary
- Redesigning new Gross Profit signs with appropriate disclosures
- Create a new marketing strategy that includes disclosures regarding typically expected results and hyperlinks
- Adding a “how to post about the summer sales and leadership program” in the training of the Company’s independent student dealers and sales managers

ANALYSIS AND RECOMMENDATION

A. Express and Implied Earnings Claims – Representatives’ Social Media Posts

An advertiser has the burden to support all reasonable interpretations of its claims and not simply the messages it intended to convey. The Procter & Gamble Company (Pampers Easy Ups), Report #6045, *NAD/CARU Case Reports* (January 2017); Substantiation Policy Statement, appended to Thompson Medical Co., 104 F.T.C. 648 (1984). In the direct selling context, the DSSRC self-regulatory program makes clear that the responsibility of the direct selling company extends to the claims disseminated by members of a direct selling company’s salesforce. FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR §255.1(d).¹

With respect to the “Gross Profit” depictions on social media, DSSRC determined that such posts may reasonably communicate to consumers that a typical student dealer of Southwestern Advantage would expect to earn the incomes depicted in the social media posts. If such results are not what would be reasonably expected by the typical student that sells Southwestern Advantage, DSSRC remained concerned that the atypicality of such results was not being appropriately disclosed to consumers along with the typical earnings that can reasonably be expected.

¹ This responsibility is also expressly recognized by the Direct Selling Association’s Code of Ethics. DSA Code of Ethics, § 8(b)(1)

Specifically, the FTC Guide Concerning the Use of Endorsements and Testimonials in Advertising provides that:

An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser's experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.

16 CFR § 255.2(b). Accordingly, DSSRC appreciates that Southwestern Advantage has agreed to remove the "Gross Profit" depictions, a voluntary action which DSSRC determined to be necessary and appropriate. DSSRC recommends that if similar depictions are made in future marketing materials or social media posts that such depictions clearly and conspicuously disclose the typical earnings that can be reasonably expected by a student dealer of Southwestern Advantage.

Similarly, with respect to "Zero Loan Debt" depictions on social media, DSSRC determined that such posts may reasonably communicate to consumers that a typical student dealer of Southwestern Advantage could expect to graduate from college with no student loan debt. Here too, if graduating with no student loan debt is not what would be expected by the typical student that sells Southwestern Advantage educational opportunities, DSSRC concluded that the atypicality of such results was not being disclosed to consumers along with the typical earnings/amount of student loan debt that can be expected. DSSRC appreciates that Southwestern Advantage voluntarily agreed to remove the "Zero Loan Debt" depictions and found such removal to be necessary and appropriate. DSSRC recommends that if similar depictions are made in future marketing materials or social media posts that such depictions clearly and conspicuously disclose what can be reasonably be expected by the typical student dealer of Southwestern Advantage.

B. Express and Implied Earnings Claims – Video Testimonials on Company's Website

At the time of DSSRC's reply to the initial written submission from Southwestern Advantage, a number of video testimonials remained on the Company's website. After further discussions with DSSRC, Southwestern Advantage removed such video testimonials. DSSRC believes removal of these videos was necessary and appropriate as DSSRC determined that the testimonials may reasonably communicate to consumers that a typical student dealer of Southwestern Advantage would expect to earn the incomes depicted in the videos. DSSRC recommends that if similar testimonials are made in future marketing that such depictions clearly and conspicuously disclose the typical earnings that can be expected by a student dealer of Southwestern Advantage.

CONCLUSION

DSSRC determined that the express and implied earnings claims made on social media and on Southwestern Advantage's website may reasonably communicate to consumers that a typical

student dealer of Southwestern Advantage would earn the amounts depicted from selling Southwestern Advantage and/or graduate with no student loan debt. DSSRC recommends that if similar claims are made in future marketing that Southwestern Advantage clearly and conspicuously disclose to consumers the typical earnings and/or results that can be expected by a student dealer of Southwestern Advantage.

Likewise, DSSRC determined that the video testimonials on the Company's website may reasonably communicate to consumers that a typical student dealer of Southwestern Advantage would earn the amounts claimed in the testimonials and that such a message was not supported by the Company. DSSRC appreciates that the Company has removed these video testimonials and recommends that if similar testimonials are used in future marketing that it be clearly and conspicuously disclosed to consumers what are the typical earnings and/or results that can be expected by a student dealer of Southwestern Advantage.

COMPANY STATEMENT

Southwestern Advantage “confirm[s] the compliance and acceptance for Southwestern Advantage as it pertains to the recommendations of the DSSRC... Southwestern Advantage has removed video and content both online and on social media channels that may promote lifestyle or contain amounts made without context or disclosure... and ha[s] updated the FAQ parts of our website and have plans to create an entire new website by January 15, 2020. The Company has added a disclosure page to the website, (www.southwesternadvanage.com/disclosure)” and is “in the process of creating new marketing materials that will include the elements of our discussions [with DSSRC] and will have additional training for our independent student dealers.”

(Case No. 2-2019 HJS, closed on 8/2/2019)
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